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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 REGAL WEST CORPORATION, a
10 Washington corporation doing business as
11 Regal Logistics and as Appiaway.com,

12 Plaintiff,

13 v.

14 GRAPECITY, INC., a Tennessee
15 corporation,

16 Defendant.

CASE NO. C11-5415BHS

ORDER DENYING
DEFENDANT’S MOTION TO
DISMISS OR FOR A MORE
DEFINITE STATEMENT

17 This matter comes before the Court on Defendant Grapecity, Inc.’s (“Grapecity”) motion to dismiss or for a more definite statement (Dkt. 14). The Court has reviewed the briefs filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

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20 **I. PROCEDURAL HISTORY**

21 On June 1, 2011, Plaintiff Regal West Corporation (“Regal”) filed a complaint
22 against Grapecity for breach of contract. Dkt. 1. On June 23, 2011, Regal filed a first
23 amended complaint. Dkt. 7 (“FAC”). Regal alleges that it contracted with Grapecity “to
24 develop and implement the technical architecture of an Automated Transportation
25 Management System (ATM)” FAC, ¶ 3.3. Regal alleges that Grapecity delivered an
26 “unusable” product. *Id.*, ¶¶ 3.5 & 3.6. Regal alleges resulting damages. *Id.*, ¶¶ 3.7-3.10.
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1 On July 7, 2011, Grapecity filed a motion to dismiss or for a more definite
2 statement. Dkt. 15. On August 8, 2011, Regal responded. Dkt. 22. On August 12, 2011,
3 Grapecity replied. Dkt. 24.

4 II. DISCUSSION

5 A. Grapecity's Motion to Dismiss

6 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a
7 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
8 theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990).
9 Material allegations are taken as admitted and the complaint is construed in the plaintiff's
10 favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). "While a complaint attacked
11 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a
12 plaintiff's obligation to provide the grounds of his entitlement to relief requires more than
13 labels and conclusions, and a formulaic recitation of the elements of a cause of action will
14 not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (*internal*
15 *citations omitted*). "Factual allegations must be enough to raise a right to relief above the
16 speculative level, on the assumption that all the allegations in the complaint are true (even
17 if doubtful in fact)." *Id.* at 1965. Plaintiffs must allege "enough facts to state a claim to
18 relief that is plausible on its face." *Id.* at 1974.

20 Given these standards, "it is axiomatic that the motion to dismiss for failure to state
21 a claim is viewed with disfavor and is rarely granted." *Hall v. Santa Barbara*, 833 F.2d
22 1270, 1274 (9th Cir. 1986). The question for the Court is whether the "non-conclusory,
23 'factual content,' and reasonable inferences from that content" are "plausibly suggestive
24 of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969
25 (9th Cir. 2009).

26 In this case, Regal's cause of action is for a breach of contract under Washington
27 law. See FAC § IV. This type of claim requires a showing of "(1) a contract that
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1 imposed a duty, (2) breach of that duty, and (3) an economic loss as a result of that duty.”
2 *Myers v. State*, 152 Wn. App. 823, 218 P.3d 241, 243 (2009).

3 Grapecity moves to dismiss Regal’s FAC arguing that the FAC relies on “naked
4 assertions,” fails “to identify the contract’s relevant terms,” and provides Grapecity “with
5 no notice of the ground upon which [Regal’s] claim rests.” Dkt. 15 at 8. The Court
6 disagrees with Grapecity and finds that Regal has alleged “enough facts to state a claim to
7 relief that is plausible on its face.” *Twombly*, 127 S. Ct. at 1974. First, Regal has alleged
8 a contract that imposed a duty by alleging that Regal contracted with Grapecity “to
9 develop and implement the technical architecture of an Automated Transportation
10 Management System (ATM)” FAC, ¶ 3.3. Second, Regal has alleged a breach of
11 the duty to develop and implement the ATM by alleging the delivery of an “unusable”
12 product. *Id.*, ¶¶ 3.5 & 3.6. Third, Regal has alleged resulting damages. *Id.*, ¶¶ 3.7-3.10.
13 Therefore, the Court denies Grapecity’s motion to dismiss.
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15 **B. Grapecity’s Motion for a More Definite Statement**


16 “A party may move for a more definite statement of a pleading to which a
17 responsive pleading is allowed but which is so vague or ambiguous that the party cannot
18 reasonably prepare a response.” Fed. R. Civ. P. 12(e). A Rule 12(e) motion is
19 “ordinarily restricted to situations where a pleading suffers from unintelligibility rather
20 than want of detail” *Tilley v. Allstate Ins. Co.*, 40 F. Supp. 2d 809, 814 (S.D. W.Va.
21 1999); *see also Resolution Trust Corp. v. Gershman*, 829 F. Supp. 1095, 1103 (E.D. Mo.
22 1993) (“Rule 12(e) provides a remedy for unintelligible pleadings; it is not intended to
23 correct a claimed lack of detail.”).

24 In this case, Grapecity has failed to show that Regal’s complaint is so vague or
25 ambiguous as to be rendered unintelligible. Grapecity’s request that Regal disclose
26 specific terms of the alleged contract is an issue more appropriate for fact discovery than
27 pleading requirements.
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1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Grapecity motion to dismiss or for a more
3 definite statement (Dkt. 14) is **DENIED**.

4 DATED this 14th day of September, 2011.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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